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bought shares of stock in a building corporation as part of a transaction in which it leased banking quarters in the building to be erected. The promoter of the corporation contracted to buy from the bank at a later date the stock acquired by it, and deposited security for his performance. When suit was brought on his promise, the defendant set up that the acts of the bank were *ultra vires* and the transaction void. The court held that the transaction was *intra vires* and intimated that the authority of the bank was not subject to attack in this manner. *Fourth National Bank of Nashville v. Stahlman*, 178 S. W. 942 (Tenn.).

For a discussion of the principles involved, see NOTES, p. 320.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — CLAIMS AGAINST UNITED STATES — STATUTE LIMITING ATTORNEYS' FEES. — The defendant employed the plaintiff to prosecute a claim against the United States for land taken during the Civil War, and contracted to pay him an amount equal to 33 $\frac{1}{3}$ per cent of the sum recovered. The Court of Claims having found for the claimant, Congress passed a special appropriation act, which provided that not more than 20 per cent of the amount thus appropriated should be paid for attorneys' services. Accordingly, 20 per cent was paid to the plaintiff, who now sues his client for the balance. Held, that he may recover, the restriction being unconstitutional. *Moyers v. Fahey*, 43 Wash. L. Rep. 691 (Sup. Ct., D. C.).

For a discussion of the question involved in this decision, see NOTES, p. 328.

DIVORCE — GROUNDS — DESERTION — DEED OF SEPARATION. — When a husband was about to desert his wife, they executed a deed of separation, in which it was mutually agreed that they should live apart, and he agreed to pay her a weekly allowance. About a year later he ceased paying and left for Australia with another woman. Held, that the wife is entitled to a divorce on the grounds of adultery and desertion. *Smith v. Smith*, 60 Sol. J. 25 (P. D.).

American courts regard covenants to live apart as against public policy, and therefore unenforceable. *Aspinwall v. Aspinwall*, 49 N. J. Eq. 302; *Smith v. Knowles*, 2 Grant Cas. (Pa.) 413. Thus, though such covenants are evidence of consent to separation, the consent may be revoked, causing further living apart to be desertion. *Schanck v. Schanck*, 33 N. J. Eq. 363. See *Hankinson v. Hankinson*, 33 N. J. Eq. 66, 70. But in England such covenants are now specifically enforced by injunction against proceedings for the restitution of conjugal rights. *Hunt v. Hunt*, 4 DeG. F. & J. 221; *Besant v. Wood*, 12 Ch. Div. 605. See R. J. Peaslee, "Separation Agreements Under the English Law," 15 HARV. L. REV. 638, 653, 654. And under the Judicature Act they may be pleaded by way of defense to such suits. *Marshall v. Marshall*, 5 P. D. 19. Logically they should also be a defense to actions for divorce on the ground of desertion, since the consent cannot be revoked when embodied in a valid contract. *Queen v. Leresche*, [1891] 2 Q. B. 418; *Crabb v. Crabb*, 1 P. & D. 601. However, separation deeds will, upon equitable principles, be held invalid, if they have been procured by fraud or coercion, or if they are unfair to the wife. *Dagg v. Dagg & Speake*, 7 P. D. 17; *Lambert v. Lambert*, 2 Bro. P. C. 18; see *Crabb v. Crabb*, 1 P. & D. 601, 604. Of course a separation deed giving permission to live apart does not include permission to commit adultery. *Morrall v. Morrall*, 6 P. D. 98. But in England proof of adultery by the husband entitles the wife only to a judicial separation: in order [to obtain a decree of dissolution she must also prove either cruelty or desertion. *Fitzgerald v. Fitzgerald*, 1 P. & D. 694; *Balcombe v. Balcombe*, [1908] P. D. 176, 177, 178.

DIVORCE — GROUNDS — DESERTION: REFUSAL TO LIVE WITH HUSBAND'S PARENTS. — The plaintiff petitioned for a divorce, on the ground of his wife's

desertion. He had declined to live elsewhere than with his parents, although his wife's temperament appeared to clash continually with that of her mother-in-law. *Held*, that the decree will not be granted as the desertion was justified. *McCampbell v. McCampbell*, 63 Pittsb. Leg. J. 641 (C. P. Allegheny Co., Pa.).

Under the Pennsylvania statute, a desertion, to be sufficient ground for a divorce, must be wilful, malicious, and without reasonable cause. See *PURDON'S DIG. PA. STAT.* (1905), 1230. Although of various forms, nearly all desertion statutes have been construed to allow a divorce for any desertion unless excused by something which would be a ground for granting a divorce to the deserting spouse. *Detrick's Appeals*, 117 Pa. St. 452, 11 Atl. 882; *Craig v. Craig*, 90 Ark. 40, 117 S. W. 765. See 1 *BISHOP, MARRIAGE, DIVORCE AND SEPARATION*, §§ 1664, 1753. *Contra, Laing v. Laing*, 21 N. J. Eq. 248, 250. Since the husband has the right to determine the locus of the home, the mere election to live with his parents, provided adequate support and a comfortable home are given the wife, can present no ground for divorce. *Rodenbaugh v. Rodenbaugh*, 17 Pa. Co. Ct. R. 477. See 1 *BISHOP, MARRIAGE, DIVORCE AND SEPARATION*, §§ 1713, 1716. Under extreme circumstances, however, to compel the wife to live with her mother-in-law may amount to such cruelty as would be ground for divorce; and, accordingly, in such cases the wife's desertion is justified. *Shinn v. Shinn*, 51 N. J. Eq. 78, 24 Atl. 1022. *Cf. Dailey's Appeal*, 10 Wkly. Notes Cas. 420. However, the mere existence of an unfriendly spirit between the mother-in-law and the wife, as in the principal case, can hardly be called sufficient cruelty to justify the latter in deserting her husband. *Jones v. Jones*, 55 Mo. App. 523; *Loux v. Loux*, 57 N. J. Eq. 561, 41 Atl. 358. *Cf. Mossa v. Mossa*, 123 N. Y. App. Div. 400, 107 N. Y. Supp. 1044. *Contra, Powell v. Powell*, 29 Vt. 148; *Field v. Field*, 79 Misc. (N. Y.) 557, 139 N. Y. Supp. 673.

EMINENT DOMAIN — DAMAGES — VALUE OF FEE UNDER HIGHWAY. — The city took by condemnation the fee to water-covered shore land, already subject to a public easement of passage. *Held*, that the owner of the fee may recover substantial damages. *Matter of City of New York (Main Street)*, 216 N. Y. 67.

The owner of the fee of a street possesses valuable property in his right to make any use of the land that will not interfere with the public easement of passage. *Viliski v. Minneapolis*, 40 Minn. 304, 41 N. W. 1050; *Appleton v. New York*, 163 App. Div. 680, 148 N. Y. Supp. 870; *Allen v. Boston*, 159 Mass. 324, 34 N. E. 519; *Dell Rapids Co. v. Dell Rapids*, 11 S. D. 116, 75 N. W. 898. See *NICHOLS, EMINENT DOMAIN*, §§ 70, 71. It must follow that the condemnation of the fee of a street should be attended by the payment of substantial damages. *Buffalo v. Pratt*, 131 N. Y. 293, 30 N. E. 233. See 3 *DILLON, MUNICIPAL CORPORATIONS*, 5 ed., 1805. There can be no valid distinction in principle between the condemnation of the fee of a street and the fee of land under water subject to a right of passage, for here, too, the fee carries with it valuable rights. *Steers v. Brooklyn*, 101 N. Y. 51, 4 N. E. 7. See *NICHOLS, EMINENT DOMAIN*, § 171; *FARNHAM, WATERS AND WATER RIGHTS*, § 113 b.

EVIDENCE — HEARSAY: IN GENERAL — DECLARATIONS OF WIFE ADMISSIBLE AGAINST HUSBAND AS CO-CONSPIRATOR. — On an indictment for assault with intent to murder, evidence was given that the defendant and his wife planned to commit murder. The acts and declarations of the wife during conversations with the intended victim just before and at the time of the alleged assault were offered by the prosecution. *Held*, that these are admissible. *Thompson v. State*, 178 S. W. (Tex.) 1192.

At common law husband and wife, standing alone, cannot be conspirators. 1 Hawk. P. C., 8 ed., 448, § 8; *People v. Miller*, 82 Cal. 107, 22 Pac. 934.